Malayan Agricultural Producers Association v National Union of Plantation Workers

SUPREME COURT (KUALA LUMPUR) — CIVIL APPEAL NO 02–175–91
HARUN HASHIM AND MOHAMED YUSOFF SCJJ AND ANUAR J
21 MAY 1992

Labour Law *— Jurisdiction — Interpretation of article of consent award of Industrial Court — Question referred by Minister too general and unspecific — Whether Industrial Court had jurisdiction to hear reference — Industrial Relations Act 1967 s 33(1)*

The parties in this case had entered into a collective agreement and this agreement was presented to the Industrial Court for a consent award which was granted and recorded. The Minister subsequently referred the interpretation of art 8 of the award to the Industrial Court. Article 8 of the award provided that the provisions of s 16 of the Employment Act 1955 should apply to employees covered by the said section in respect of the minimum number of days' work in each month. At the hearing before the Industrial Court the respondent raised a preliminary objection on the ground that the Industrial Court had no jurisdiction to hear the reference, as the reference letter of the Minister was void for uncertainty and/or ultra vires s 33(1) of the Industrial Relations Act 1967 ('the 1967 Act'). The Industrial Court dismissed the preliminary objection. The respondent then applied to the High Court for a writ of certiorari to quash the award of the Industrial Court and this was granted. The appellant appealed.

Held, dismissing the appeal:

(1) The essence of s 33(1) of the 1967 Act is the question which the Minister is referring or the party making the application is asking the Industrial Court to interpret. The Minister in referring any question which arises on the interpretation of any award or collective agreement to the Industrial Court under s 33(1) of the 1967 Act, should set out the matters under contention between the parties and the questions desired to be answered in respect of such contention.

(2) A reference by the Minister under s 33(1) of the 1967 Act had to be precise so that on its face, the Industrial Court would know exactly the question it had to answer. In this case the question referred by the Minister was too general and far from being specific. It did not disclose what the real problem was. The Industrial Court should have declined to answer the question.

(3) In this case if a specific question had been framed in the form suggested by the court, the Industrial Court in its interpretation of art 8 of the award had the power to and must also interpret s 16 of the Employment Act 1955 to give effect to art 8 and the award as a whole.

[Bahasa Malaysia summary

Kedua pihak di dalam kes ini telah mengikat perjanjian kolektif dan perjanjian itu telah dikemukakan kepada Mahkamah Perusahaan untuk mendapat award persetujuan yang telah diberikan dan direkodkan. Kemudiannya Menteri telah merujukkan tafsiran perkara 8 di dalam award itu kepada Mahkamah Perusahaan. Perkara 8 award itu memperuntukkan bahawa peruntukan s 16 Akta Pekerjaan 1955 patut terpakai kepada pekerja-pekerja di bawah liputan seksyen itu mengenai bilangan minimum hari kerja dalam setiap bulan. Di perbicaraan di hadapan Mahkamah Perusahaan responden telah menimbulkan bantahan permulaan atas alasan bahawa Mahkamah Perusahaan tidak ada bidang kuasa untuk mendengar perkara yang dirujuk itu oleh kerana surat rujukan Menteri adalah terbatal kerana ketidakpastian dan/atau ultra vires s 33(1) Akta Perhubungan Perusahaan 1967 ('Akta 1967 itu'). Mahkamah Perusahaan telah menolak bantahan permulaan itu. Responden kemudiannya memohon kepada Mahkamah Tinggi untuk mendapat writ certiorari untuk membatalkan award Mahkamah Perusahaan itu dan ini telah di benarkan. Perayu telah membuat rayuan.

Diputuskan, menolak rayuan itu:

(1) Intipati s 33(1) Akta 1967 itu ialah soalan yang Menteri merujukkan atau pihak yang membuat permohonan itu memohon tafsirannya oleh Mahkamah Perusahaan. Menteri dalam merujuk sebarang soalan yang timbul mengenai tafsiran mana-mana award atau perjanjian kolektif kepada Mahkamah Perusahaan di bawah s 33(1) Akta 1967 itu harus menyatakan perkara-perkara yang dipertikaikan antara kedua pihak itu dan soalan-soalan yang dikehendaki dijawab mengenai pertikaian itu.

(2) Rujukan oleh Menteri di bawah s 33(1) Akta 1967 itu hendaklah tepat supaya pada mukanya, Mahkamah Perusahaan akan tahu soalan yang sebenarnya ia mesti menjawab. Di dalam kes ini soalan yang dirujukkan oleh Menteri adalah terlalu am and jauh dari khusus. Ia tidak mendedahkan apa dia masalah yang sebetulnya. Mahkamah Perusahaan seharusnya menolak menjawab soalan itu.

(3) Di dalam kes ini jika soalan yang khusus telah dibentuk seperti yang dicadangkan oleh mahkamah, Mahkamah Perusahaan dalam mentafsirkan perkara 8 award itu berkuasa dan mesti juga mentafsirkan s 16 Akta Pekerjaan 1955 untuk memberi kesan kepada perkara 8 dan award itu seluruhnya.]

Legislation referred to
Employment Act 1955 s 16
Industrial Relations Act 1967 s 33(1)

Appeal from: Originating Motion No R8–25–114–1190

A *VT Nathan* and *Peh Lee Kheng* (*Shearn Delamore & Co*) for the appellant. *B Lobo* (*Lobo & Associates*) for the respondent.

Harun Hashim SCJ (delivering the grounds of judgment of the court): On 6 April 1990 the Malayan Agricultural Producers Association ('MAPA') and the National Union of Plantation Workers ('NUPW') entered into a collective agreement for a period of three years effective from 1 May 1990 to 30 April 1993. On 14 April 1990 both parties presented the collective agreement to the Industrial Court with a request for a consent award. The Industrial Court acceded to the request and recorded a consent award as Award No 92/90 ('the award').

On 23 May 1990, the Minister, acting under s 33(1) of the Industrial Relations Act 1967, referred the following question to the Industrial Court for interpretation:

> Tafsiran artikel 8 dalam Keputusan Mahkamah Perusahaan No 92/90 yang bertajuk — Minimum number of days' work in each month.

Article 8 of the award provides:

> Minimum number of days' work in each month. The provisions of s 16 of the Employment Act 1955 shall apply to employees covered by the said section.

Section 16 of the Employment Act 1955 reads:

> (1) Where an employee is employed in any agricultural undertaking on an estate on a contract of service under which he earns wages calculated by reference to the number of days' work performed in each month of his service, his employer shall be bound either to provide him with work suitable to his capacity on not less than twenty-four days in each month during the whole of which he is so employed, or if the employer is unable or fails to provide work on twenty-four days in each month whereon the employee is willing and fit to work, the employer shall nevertheless be bound to pay to the employee in respect of each of such days wages at the same rate as if such employee had performed a day's work:
>
> Provided that any dispute as to whether an employee was willing or fit to work shall be referred to the Director General for his decision:
>
> Provided further that in computing twenty-four days for the purposes of this subsection account shall not be taken of more than six days in any week.
>
> (2) A contract of service shall be deemed to be broken by an employer if he fails to provide work or pay wages in accordance with subsection (1).

At the hearing before the Industrial Court, NUPW raised a preliminary objection on the ground that the Industrial Court had no jurisdiction to hear the reference for the following reasons:

> (a) The Union states that the purported reference letter dated 24 May 1990 by the YB Minister of Human Resources (the reference) is void for uncertainty and/or is ultra vires the provisions of s 33(1) of the Industrial Relations Act 1967 ('the Act') and therefore this court is not seized with jurisdiction to hear the case.
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> (b) The Union states that MAPA had associated itself with this contention of the NUPW on 3 June 1990 in court. A copy of a *New Straits Times* press report on the matter is annexed hereto marked 'NUPW–1'.

Further or in the alternative, the Union avers and will contend at the hearing that this honourable court ought not to hear the said reference on its merits or otherwise because to do so will be to usurp the statutory duties of the Director General of Labour and/or eventually the jurisdiction of the High Court and the Supreme Court by virtue of:

(a) the provisions of art 8 of the said Award 92 of 1990 which is the subject matter of the said reference; and/or
(b) the provisions of the Employment Act 1955 which provides the remedy therein to an aggrieved employee for breach or otherwise of any provision thereof.

The Industrial Court on 15 October 1990 dismissed the preliminary objection and directed NUPW to file its statement in reply to MAPA's statement of case.

On 26 October 1990 NUPW applied to the High Court for leave to issue a writ of certiorari to quash the said ruling of the Industrial Court. The leave was granted and the motion proper was heard on 27 March 1991 wherein the learned judge allowed the application and quashed the award of the Industrial Court. Hence this appeal.

Section 33 of the Industrial Relations Act 1967 provides:

(1) If any question arises as to the interpretation of any award or collective agreement taken cognizance of by the Court, the Minister may refer the question, or any party bound by the award or agreement may apply, to the Court for a decision on the question.
(2) The Court may, upon the application of any party, by order vary any of the terms of an award, if it considers it desirable so to do for the purpose solely of removing ambiguity or uncertainty.
(3) The parties bound by the award or agreement shall be afforded a reasonable opportunity of being heard.
(4) The decision of the Court shall be binding in the same manner as the original award or agreement.
(5) The expression 'Court' for the purpose of this section, means the Court by which the award was made or any other Court specially constituted under section 22 for the purpose.

The essence of s 33(1) is *the question* which the Minister is referring or the party making the application is asking the Industrial Court to interpret.

In the instant case the question referred to the court is: 'What is the interpretation of art 8 of the award?' The short answer to that question is that the provisions of s 16 of the Employment Act 1955 applies with regard to the minimum number of days of work in each month in respect of employees bound by the award covered by that section. It seems to us that the answer to the question is so obvious that it cannot be the question the Minister wants an answer. The question is too general and far from being specific. It does not disclose what the real problem is. We are of the view that the Minister in referring any question which arises as to the interpretation of any award or collective agreement to the Industrial Court under s 33(1) should set out the matters under contention between the parties and the questions desired to be answered in respect of such contention.

A cursory look at s 16 of the Employment Act 1955 shows that several questions can arise under that section. We think it will be a great imposition

on the Industrial Court to expect it to visualize the many possibilities. The Industrial Court recognized the difficulty when it said in para 7 of the award:

> Indeed, the Minister should frame the reference carefully and the question which is intended to be tried by the Industrial Court should be so worded as to leave no scope for ambiguity or controversy.

In the instant case, MAPA in its statement of case in the Industrial Court set out the various issues between it and NUPW arising out of art 8 of the collective agreement and its interpretation of s 16 of the Employment Act 1955 with a preamble that art 8 itself is inadequately worded.

The Industrial Court in its award said that with the Minister's reference it was seized with jurisdiction and however inaccurate the question might be it is duty bound to exercise its jurisdiction. It was at liberty to find out what the real issues are. It would appear that the Industrial Court in stating this, was prepared to decide on issues placed before it on the material put forward by MAPA in its statement of case coupled with the reference of the Minister which stated that there was a dispute between MAPA and NUPW with regard to the interpretation of art 8. On its face, it is not known whether these are the questions the Minister wants answered. In the High Court, the learned judge held that the Industrial Court had no jurisdiction to answer the questions put forward by MAPA because the reference was made by the Minister. We agree.

Under s 33(1) MAPA, being a party to the award, is at liberty to apply to the Industrial Court directly for an interpretation of art 8. If it had done so, then it would have been proper for the Industrial Court to answer the questions set out in MAPA's statement of case.

A reference by the Minister under s 33(1) is different from say, a reference of a trade dispute under s 26 where the Minister need only identify the parties to the dispute and state a dispute exists between them with regard to the conclusion of a collective agreement, or the dismissal of certain employees, without going into details. In such cases, the Industrial Court is granted very wide powers to determine the real dispute between the parties and may even include matters not specifically claimed by the parties: s 30(7). A s 33(1) reference, on the other hand, has to be precise so that on its face, the Industrial Court will know exactly the question it has to answer. The facts which give rise to the question have to be stated but must not be disputed. In the process of answering the question, the Industrial Court will have the benefit of hearing the respective views of the parties bound by the award or collective agreement: s 33(3). The Industrial Court should decline to exercise its jurisdiction under this section if it is made to determine disputed questions of fact, so as to ensure that trade disputes are not short-circuited to it in the guise of interpretation questions.

Turning now to the alternative objection of NUPW, we find that this argument is without merit. The Director General of Labour does not have exclusive jurisdiction to interpret s 16 of the Employment Act 1955. In collective agreements or awards, it is quite common to find, as here, reference being made to provisions of the Employment Act 1955 for the sake of brevity, convenience or consistency. When this occurs, the Indus-

trial Court has the power to interpret the relevant provisions of the Employment Act 1955 as it applies to the particular collective agreement or award. Thus, if the question is whether rubber tappers bound by the award in this case are covered by art 8, the Industrial Court has the power to interpret s 16 of the Employment Act 1955 in the context of the award.

Indeed in an interpretation case under s 33(1) or non-compliance case under s 56(1), the Industrial Court cannot discharge its functions if it is prevented from interpreting relevant laws which have been incorporated as terms in an award or collective agreement. In the present case therefore, if a specific question has been framed in the form we have suggested, the Industrial Court in its interpretation of art 8 of the award must also interpret s 16 of the Employment Act 1955 to give effect to art 8 and the award as a whole.

Before parting with the case, we observe that Award No 92/90 was in fact a collective agreement but instead of depositing it with the Industrial Court under s 16 for cognizance so that it will have the effect of an award under s 17, it was presented to the Industrial Court for a consent award which makes it an award under s 30. We are of the view that the Industrial Court in this instance will have an initial difficulty in hearing a case under s 33(1) because there is a difference in the interpretation of a collective agreement and the interpretation of an award. And the difference is this: the interpretation of a collective agreement is an attempt to ascertain the *intention of the parties* whereas the interpretation of an award involves ascertaining the *intention of the court*. And if it is an award, the interpretation placed on the award by the parties is irrelevant because only the court can pronounce its own intention. Who then is the author of art 8? For the reasons stated we dismissed the appeal with costs. Deposit to the respondent to account of taxed costs.

Appeal dismissed.

Reported by Prof Ahmad Ibrahim